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NOTE AND COMMENT

JAMES H. BREWSTER.—Thousands of alumni and former students of the Law School will learn with deep regret of the sudden death of Professor Brewster in Denver, Colorado, on October 7, 1920.

Professor Brewster was born in New Haven, Connecticut, April 6, 1856, the son of Rev. Joseph and Sarah Bunce Brewster. He was educated at the Hopkins Grammar School and New Haven public schools and was graduated with the degree of Ph.B. from Sheffield Scientific School, Yale, 1877, and from the Law School of the same University with the degree of LL.B. in 1879. From 1883 to 1897 he practiced law in Detroit at which place, on June 28, 1888, he was married to Miss Frances Stanton. In 1897 he was made Professor of Law at the University of Michigan, and from 1903 until the severance of his connection with the Law School in 1910 as a result of ill health, he was Editor-in-Chief of this Review. His well-known book, BREWSTER ON CONVEYANCING, was the result of his work and lectures on that subject in the Law School. After recovering, in a measure, his health, Professor Brewster taught for a time in the Law School of the University of Colorado. For several years, however, he had been in the active practice of his profession in Denver.

Former students of Professor Brewster will remember him for his broad interests, his geniality, and kindness. As a teacher of law, he was remarkable in his clearness of thought and expression. Members of the student editorial board of this Review during the period covered by his editorship, who came into much closer contact with him than did the student body generally, owe him a great deal for his stimulating personality and scholarship.

PRICE REGULATION UNDER THE POLICE POWER.—A recent Indiana law providing for the regulation of prices at which all coal moving in intra-state commerce in the state may be sold, has just received the sanction of the District Court of the United States for the District of Indiana.¹ The case arose upon a bill of complaint filed by one of the operating companies to enjoin the commission created by the Act from entering upon any of its duties. Several aspects of the bill were deemed by the court to be premature but the vital point in controversy was adjudicated, namely, as to whether or not the state has any power at all to regulate profits arising from the industry. In denying the injunction and dismissing the bill the court added one more to the already large number of "businesses affected with the public interest" of which phrase the Supreme Court of the United States has said, "We can best explain by examples."² Inasmuch as the opinion was rendered by a court consisting of two circuit judges and one district judge it would seem to be entitled to almost if not quite as much weight as though rendered by a Circuit Court of Appeals.

The phrase "business affected with the public interest" was first used in this country in an opinion delivered by Chief Justice Waite in the case of *Munn v. Illinois*,³ decided in 1876, holding that the business of storing grain in elevators was so affected and is there quoted from an old treatise⁴ of Lord Chief Justice Hale. As applied in that and succeeding cases it has seemed to mean no more than this, that there are certain classes of businesses which may be regulated by the state to a greater extent than others to which the term "purely private" has been applied. No precise test has so far been laid down by the Supreme Court by means of which the limits of these two classes can be distinguished. The attitude thus far steadfastly adhered to by the Court may be illustrated by the following quotation from its most important recent decision upon the point, *German Alliance Insurance Co. v. Lewis*.⁵ After reviewing at length the cases following *Munn v. Illinois*, *supra*, the court commented upon the group as a whole as follows: "The cases need no explanatory or fortifying comment. They demonstrate that a business, by circumstances and its nature, may rise from private to be of public concern, and be subject, in consequence, to governmental regulation. * * * The underlying principle is that business of certain kinds holds such a peculiar

¹ *American Coal Mining Co. v. The Special Coal and Food Commission of Indiana*, et al., — Fed. — (Sept. 6, 1920).

² *German Alliance Insurance Co. v. Lewis*, 233 U. S. 389.

³ 94 U. S. 113.

⁴ *DE PORTIBUS MARIS*, 1 HARG. L. T. R. 78.

⁵ 233 U. S. 389.